

Wage and Hour Division, Labor

§ 780.117

It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within section 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.160 through 780.164 which discuss the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute “agriculture.” For a discussion of the exemption in section 13(a)(13) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see part 788 of this chapter.

[74 FR 26014, May 29, 2009]

§ 780.116 Commodities included by reference to the Agricultural Marketing Act.

(a) Section 3(f) expressly provides that the term “agricultural or horticultural commodities” shall include the commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141–1141j). Section 15(g) of that Act provides: “As used in this act, the term ‘agricultural commodity’ includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producers of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum resin, as defined in the Naval Stores Act, approved March 3, 1923” (7 U.S.C. 91–99). As defined in the Naval Stores Act, “‘gum spirits of turpentine’ means spirits of turpentine made from gum (oleoresin) from a living tree” and “‘gum rosin’ means rosin remaining after the distillation of gum spirits of turpentine.” The production of these commodities is therefore within the definition of “agriculture.”

(b) Since the only oleoresin included within section 15(g) of the Agricultural Marketing Act is that derived from a living tree, the production of oleoresin from stumps or any sources other than living trees is not within section 3(f). If turpentine or rosin is produced in any manner other than the processing of

crude gum from living trees, as by digging up pine stumps and grinding them or by distilling the turpentine with steam from the oleoresin within or extracted from the wood, the production of the turpentine or rosin is not included in section 3(f).

(c) Similarly, the production of gum turpentine or gum rosin is not included when these are produced by anyone other than the original producer of the crude gum from which they are derived. Thus, if a producer of turpentine or rosin from oleoresin from living trees makes such products not only from oleoresin produced by him but also from oleoresin delivered to him by others, he is not producing a product defined as an agricultural commodity and employees engaged in his production operations are not agricultural employees. (For an explanation of the inclusion of the word “production” in section 3(f), see § 780.117(b).) It is to be noted, however, that the production of gum turpentine and gum rosin from crude gum (oleoresin) derived from a living tree is included within section 3(f) when performed at a central still for and on account of the producer of the crude gum. But where central stills buy the crude gum they process and are the owners of the gum turpentine and gum rosin that are derived from such crude gum and which they market for their own account, the production of such gum turpentine and gum rosin is not within section 3(f).

“PRODUCTION, CULTIVATION, GROWING,
AND HARVESTING” OF COMMODITIES

§ 780.117 “Production, cultivation, growing.”

(a) The words “production, cultivation, growing” describe actual raising operations which are normally intended or expected to produce specific agricultural or horticultural commodities. The raising of such commodities is included even though done for purely experimental purposes. The “growing” may take place in growing media other than soil as in the case of hydroponics. The words do not include operations undertaken or conducted for purposes not concerned with obtaining any specific agricultural or horticultural commodity. Thus operations which are